

Agenda Item #

56

Distribution:  
County Board  
County Administrator  
Planning & Development (2)  
Lake County Partnership for  
Economic Development, Inc.

STATE OF ILLINOIS)

)ss

COUNTY OF LAKE )

COUNTY BOARD, LAKE COUNTY, ILLINOIS  
REGULAR SEPTEMBER, A.D., 2008 SESSION  
SEPTEMBER 9, A.D., 2008

Madame Chair and Members of the Board:

Your Health & Community Services and Financial & Administrative Committees herewith present a Resolution authorizing the execution and delivery of a Second Supplement to an Indenture between The County of Lake, Illinois and American Chartered Bank and a Supplemental Tax Exemption Certificate and Agreement in connection with the County's Industrial Revenue Bond, Series 1998 (Valenti Properties, L.L.C. Project), approving certain other Agreements and Related Matters and request the Board's adoption.

Respectfully submitted,

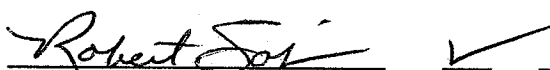
Aye    Nay

 ✓  
Chairman

 ✓  
Vice-Chairman

 ✓

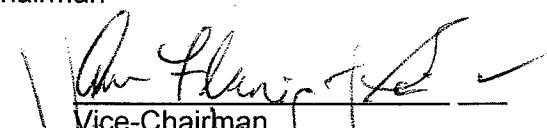
 ✓

 ✓


Health and Community Services  
Committee

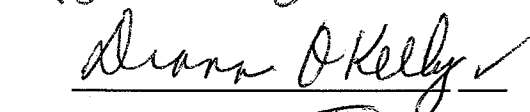
Aye    Nay

 X  
Chairman

 ✓  
Vice-Chairman

 X

 ✓

 ✓



Financial and Administrative  
Committee

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SECOND SUPPLEMENT TO INDENTURE

Dated as of September 1, 2008

Between

THE COUNTY OF LAKE, ILLINOIS,

and

AMERICAN CHARTERED BANK,  
as Bondholder

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Industrial Development Revenue Bond, Series 1998  
(Valenti Properties, L.L.C. Project)

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## SECOND SUPPLEMENT TO INDENTURE

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## SECOND SUPPLEMENT TO INDENTURE

THIS SECOND SUPPLEMENT TO INDENTURE made and entered into as of the first day of September, 2008 (the "*Second Supplement*"), by and between THE COUNTY OF LAKE, ILLINOIS, a unit of local government and body politic and corporate organized and existing under the Constitution and laws of the State of Illinois (the "*Issuer*"), and AMERICAN CHARTERED BANK, an Illinois banking corporation, as the owner of 100% of the aggregate outstanding principal amount of the Bonds (the "*Bondholder*");

### WITNESSETH:

WHEREAS, pursuant to and in accordance with the provisions of an Indenture of Trust dated as of August 1, 1998 (the "*Original Indenture*") between the Issuer and First American Bank, on August 6, 1998, the Issuer issued its Industrial Development Revenue Bond, Series 1998 (Valenti Properties, L.L.C. Project) in the original aggregate principal amount of \$4,460,000 (the "*Bond*"), which Bond is currently outstanding in the principal amount of \$\_\_\_\_\_; and

WHEREAS, the proceeds of the Bond were loaned to Valenti Properties, L.L.C., an Illinois limited liability company (the "*Borrower*"), pursuant to a Loan Agreement dated as of August 1, 1998 (the "*Loan Agreement*") between the Issuer and the Borrower; and

WHEREAS, First American Bank (the "*Original Bondholder*") was the original owner of 100% of the outstanding principal amount of the Bond; and

WHEREAS, on August 12, 2003, the Issuer and First American Bank entered into a First Supplement to Indenture dated as of August 1, 2003 (the "*First Supplement*") amending the Original Indenture (the Original Indenture, as so amended being referred to herein as the "*Indenture*"); and

WHEREAS, Section 9.01 of the Indenture authorizes the execution and delivery of a supplemental indenture with the written consent of the Bondholder and the Borrower; and

WHEREAS, on the date of execution and delivery of this Second Supplement, the Bondholder has purchased the entire outstanding principal amount of the Bond from the Original Bondholder and in connection therewith, the parties hereto have determined to amend the Original Indenture in order to revise the interest rate on the Bond, delete the requirement for a Trustee and make certain other changes;

NOW THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

*Section 101. Definitions of Terms.* All words and terms defined in Article I and elsewhere in the Indenture shall have the same respective meanings in this Second Supplement except as amended hereby.

## ARTICLE II

### AMENDMENTS TO AMENDED INDENTURE

*Section 201. Amendment to Section 1.01 of the Indenture.* Section 1.01 of the Indenture is hereby amended by amending the defined terms "Closing Date," "Interest Period" and "Maturity Date" in their entirety to read as follows:

"*Closing Date*" shall mean, for the purposes of the initial issuance and delivery of the Bond, August 6, 1998, and for the purposes of the issuance of the amended Bond pursuant to the Second Supplemental to the Indenture, September \_\_, 2008

"*Interest Period*" means the period of time commencing on the Closing Date and ending on the Maturity Date.

"*Maturity Date*" means September 1, 2018.

*Section 202. Amendment to Section 2.02 of the Indenture.* Section 2.02 of the Indenture is hereby amended in its entirety to read as follows:

"Principal of and interest on the Bond shall be payable monthly on the first day of each month commencing October 1, 2008 through and including the Maturity Date, with principal in the amount of \$21,600 being payable on each such payment date, together with interest accruing on the then outstanding principal amount of the Bond being payable on each such payment date, all as set forth in the amortization schedule attached as *Exhibit B* hereto.

The Bond shall bear interest at 4.54% per annum computed on the basis of a 360-day year for actual days elapsed."

*Section 203. Amendment to Form of Bond; Substitution.* (a) The form of the Bond set forth in the Indenture is replaced in its entirety by the form of Bond set forth in *Exhibit A* hereto.

(b) Upon the effectiveness of this Second Supplement, the Issuer shall execute and the Bondholder shall authenticate a replacement Bond in the form contained in *Exhibit A* hereto in exchange for the Bond presently held by the previous Bondholder.

*Section 204. Deletion of Mandatory Purchase.* Since the Interest Period now extends to the Maturity Date, Section 3.01 of the Indenture is hereby deleted in its entirety. In addition, the phrase "or purchase price on" in Section 7.01(c) of the Indenture is hereby deleted.

*Section 205. Amendment to Exhibit B to the Indenture.* *Exhibit B* to the Indenture is hereby replaced in its entirety by the revised amortization schedule set forth in *Exhibit B* to this Second Supplement.

*Section 206. No Trustee Required.* The parties hereto agree that it is no longer necessary to require or maintain a Trustee under the Indenture. Accordingly, First American Bank is removed as Trustee and shall not be replaced. To the extent that the Indenture confers rights upon, or creates obligations on the part of the "Trustee", such rights and obligations shall be conferred upon or performed by the Bondholder, acting not as a trustee or fiduciary, but in its own capacity as the holder of the Bond. In connection therewith, Section 3.03 and Article VIII of the Indenture are deleted in their entirety.

### ARTICLE III

#### MISCELLANEOUS

*Section 301. Indenture Confirmed; Conflicts.* Except as amended by this Second Supplement, all of the provisions of the Indenture shall remain in full force and effect, and from and after the effective date of this Second Supplement shall be deemed to have been amended as herein set forth. In the event of any conflict between the terms of the Indenture and the terms of the Second Supplement, the terms of this Second Supplement shall control.

*Section 302. Severability.* If any provision of this Second Supplement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever; *provided, however*, that no holding of invalidity or inoperability shall require the Issuer to make any payments of revenues other than the proceeds derived from the sale of the Bonds issued under the Indenture and the proceeds derived from the Agreement (except such proceeds as may be derived by the Issuer pursuant to its Reserved Rights) or impose any personal liability on any director, member, elected or appointed officer, official, employee, attorney, or agent of the Issuer.

*Section 303. Counterparts.* This Second Supplement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*Section 304. Applicable Provisions of Law.* This Second Supplement shall be governed by and construed in accordance with the laws of the State of Illinois.

*Section 305. Limited Liability of Issuer.* No pledge, agreement, covenant, representation, obligation or undertaking by the Issuer contained in this Second Supplement and no other pledge, agreement, covenant, representation, obligation or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project or the Bond shall give rise to any pecuniary liability of the Issuer or charge against its general credit, or shall obligate the Issuer financially in any way except out of payments to be made by the Borrower under the Agreement or the Guarantor under the Guaranty other than payments to be made by the Borrower or the Guarantor pursuant to the Issuer's Reserved Rights. No failure of the Issuer to comply with any term, condition, covenant, obligation or agreement herein shall subject the Issuer to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent the same is paid by the Borrower or the Guarantor; and no execution of any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or other property of the Issuer. Nothing herein shall preclude a proper party in interest from seeking and obtaining specific performance against the Issuer for any failure to comply with any term, condition, covenant, obligation or agreement herein; *provided*, that no costs, expenses or other monetary relief shall be recoverable from the Issuer except as may be payable by the Borrower or the Guarantor. No owner of the Bond shall have the right to compel any exercise of the taxing power of the Issuer, the State or any political subdivision thereof to pay the Bond or the premium, if any, or interest thereon. The Bond shall not constitute an indebtedness of the Issuer, the State or any political subdivision thereof within the meaning of any constitutional or statutory provision.

Anything in this Second Supplement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that (a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer; (b) the Issuer shall not be under any obligation hereunder to perform any recordkeeping or, to provide any legal services, it being understood that such services shall be performed either by the Trustee or the Borrower upon request of the Issuer; and (c) none of the provisions of this Second Supplement shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall first have been adequately indemnified to its satisfaction against the cost, expenses and liability which may be incurred thereby.

All covenants, stipulations, representations, promises, agreements and obligations of the Issuer contained in this Second Supplement or in the Bond or in any other document executed in connection herewith or therewith shall be deemed to be the limited covenants, stipulations, representations, promises, agreements and obligations of the Issuer, and not of any past, present or future director, member, elected or appointed officer, official, employee, attorney or agent of the

the Issuer in his or her individual capacity. No recourse shall be had against any such individual, either directly or through the Issuer or otherwise for the payment for or to the Issuer or any sum that may be due and unpaid by the Issuer, upon the Bond or under any obligation, covenant, stipulation, promise or agreement contained herein, in the Bond or in any other document executed in connection herewith or therewith and no recourse shall be had against any of such persons on account of the issuance and sale of the Bond or on account of any representations made in connection therewith. Any and all personal liability or obligation, whether in common law or in equity or by reason of statute or constitution or by the enforcement of any assessment or otherwise, of any such person to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the holder of the Bond or otherwise, of any sum that may remain due and unpaid upon the Bond or under any of the documents executed in connection with the issuance thereof is hereby expressly waived and released as a condition to and consideration for the issuance of the Bond and the execution of this Second Supplement and related documents.

Anything in this Second Supplement to the contrary notwithstanding, the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof or of any related document until it shall have been requested to do so by the Borrower or the Trustee and shall have received from the Borrower, the Trustee or the holders of the Bond, assurance satisfactory to the Issuer that the Issuer will be reimbursed for its expenses, including attorneys' fees and expenses, incurred or to be incurred in connection with the taking of such action or execution of such instrument.



*Section 306. Effective Date.* The amendments set forth in this Second Supplement shall become effective on September \_\_, 2008

THE COUNTY OF LAKE, ILLINOIS

[SEAL]

By: \_\_\_\_\_  
Chairman, County Board

ATTEST:

\_\_\_\_\_  
County Clerk

AMERICAN CHARTERED BANK

By: \_\_\_\_\_  
Its: \_\_\_\_\_